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11 Attorneys for Plaintiffs

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13 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA
14 NORTHERN DISTRICT OF THE STATE OF CALIFORNIA
15 SAN JOSE DIVISION

16 JIMMY D. HAWS, SETH DANIEL HAWS) Case No. C 07-02599 JF
17 and MIA SKYE HAWS, minors, by and)
18 through their guardian ad litem, CARRIE A.) JOINT CASE MANAGEMENT
19 HAWS, and CARRIE A. HAWS, individually) STATEMENT AND PROPOSED
20) ORDER
21 Plaintiffs,) (RULE 16-9)
22)
23 v.) Date: September 21, 2007
24) Time: 10:30 a.m.
25 COUNTY OF MONTEREY, MICHAEL) Dept.: Court Room 4
26 KANALAKIS, NATIVIDAD MEDICAL)
27 CENTER and DOES 1-300, inclusive.)
28 Defendants.)
19

20 The parties to the above entitled action jointly submit this Case Management Statement and
21 Proposed Order and request the Court to adopt it as the Case Management Order in this case.

22 **DESCRIPTION OF THE CASE**

23 1. A brief description of the events underlying the action:

24 On December 7, 2006, Haws was a pre-trial detainee at the Monterey County Jail in Salinas.
25 He was assaulted by a fellow inmate whom plaintiffs allege defendant County and Kanalakis, its
26 sheriff, know or should have known as likely to attack Haws.

27

1 Plaintiffs allege that defendant County and its agents delayed intervention and transport of
 2 Haws for medical treatment. Plaintiff's further allege that once Haws was transported to County's
 3 medical facility, Natividad Medical Center, he received delayed diagnostic treatment and transport
 4 to Community Hospital of the Monterey Peninsula where he eventually received medical
 5 intervention. Plaintiff's claim that the assault and the delays in treatment caused plaintiff Haws brain
 6 injury. His fellow plaintiffs assert claims for loss of consortium foundationed in 14th Amendment due
 7 process guarantees.

8 2. The principal factual issues which the parties dispute:

- 9 a. Defendants' notice of Haws' jeopardy circumstance with his assailant.
- 10 b. Defendants' delay in responding to Haws' and delay in providing medical treatment.
- 11 c. Whether any delay in medical treatment exacerbated plaintiff Haws' condition.
- 12 d. Whether plaintiffs, any of them, were injured as a result of defendants' conduct.
- 13 e. Whether medical personal at Natividad Medical Center were independent contractors.
- 14 f. Plaintiff's brain injury has caused significant communication problems or other issues
 15 giving rise to a serious loss of relationship with the remaining plaintiffs.

16 3. The principal legal issues which the parties dispute:

- 17 a. Whether defendants' conduct constituted a violation of a cognizable right under
 18 federal law.
 - 19 (1) Whether plaintiff can demonstrate conduct which constitutes a deliberate
 20 indifference to detainees' personal security due to a pattern of over crowded,
 21 improper placement of inmates and inadequate supervision of inmates by
 22 sheriff's personnel.
 - 23 (2) Whether evidence of delayed medical care constituted a failure to take
 24 reasonable action to summons medical care pursuant to California
 25 Government Code § 845.6.
- 26 b. Whether defendant Kanalakis is entitled to qualified immunity.

- 1 c. Whether the care providers responsible for Jimmy Haws' treatment at Natividad
 2 Medical Center were independent contractors obviating County's liability pursuant to
 3 Government Code § 815.2(a) which applies the doctrine of respondeat superior only
 4 to employees' acts and omissions. (State law governmental immunities do not apply
 5 to federal causes of action.)
- 6 d. Whether the activities of the care providers responsible for Jimmy Haws' treatment
 7 at Natividad Medical Center were performing a non-delegable duty, removing the
 8 shield of Government Code § 815.2(a) pursuant to Government Code § 815.4.
- 9 e. Whether the work performed by the alleged independent contractors health care
 10 providers had an attendant peculiar risk of harm and the contractor failed to take
 11 necessary precautions, overcoming immunity pursuant to Government Code §
 12 815.2(a). *Castro v. State* (1981) 114 CA 3d 503 at 510, 170 CR 734.
- 13 4. The other factual issues which remain unresolved for the reasons stated below and how the
 14 parties propose to resolve those issues:
- 15 a. Independent contractor status (and ramifications thereof) for medical care providers.
 16 Independently of the County's liability for the conduct of alleged
 17 independent contractors, they remain liable pursuant to California case
 authority.
- 18 *Balding v. D.B. Stutsman Inc.* (1966) 246 CA 2d 559, 54 CR 717.
- 19 Defendants Natividad Medical Center has notified plaintiff's counsel that the ER
 20 physician was employed by California Emergency Physicians and that his primary
 21 nurse (Nurse Coniglio) was employed by another contractor, Nurse Finders. Mr.
 22 Sheuerman's office has agreed to provide documentary support of this representation.
 23 Upon its analysis plaintiff's counsel may determine to name these defendants.
- 24 b. Defendant County has filed a second Motion to Strike which is set for hearing on
 25 November 2, 2007.
- 26 5. The parties which have not been served and the reasons: Not applicable.
- 27

1 6. The additional parties which the below specified parties intend to join and the intended time
2 frame for such joinder.

- 3 a. The medical care providers identified in ¶4a. for the reasons stated therein. Plaintiff's
4 require documentary support for the representation of their independent contractor
5 status and wish to depose each before determining whether to join them as defendants.
6 b. Other private contractors including architect and general contractor who constructed
7 /remodeled jail.
8 c. Unidentified Doe defendants responsible for supervision and safety of Jimmy Haws
9 at time he was exposed to a foreseeable danger.
10 d. Other Doe defendants identified as a result of pre-trial discovery.

11 7. The following parties consent to assignment of this case to a United States Judge for trial:

12 None.

ALTERNATIVE DISPUTE RESOLUTION

14 8. The parties filed a Notice of Need for ADR Phone Conference and the phone conference will
15 be held on September 19, 2007.

16 9. Not applicable.

DISCLOSURES

18 10. The parties certify that they have made the following disclosures:

- 19 a. Plaintiff Jimmy Haws complete medical records from defendant Natividad Medical
20 Center, and CHOMP have been subpoenaed by the parties.
21 b. Plaintiff's counsel will provide disclosure of plaintiff's subsequent medical records
22 to include Pleasant Care Convalescent Hospital if available and his subsequent SNF,
23 Mee Memorial Extended Care in Kings City.
24 c. Defendant County of Monterey has provided the reports/statements from the
25 investigation of the incident at the jail.
26 d. Defendant Natividad Medical Center has not provided anything to date.

- 1 11. The Parties agree to the following discovery plan:
- 2 a. Plaintiff wishes to depose percipient witnesses including the following Monterey
3 County Sheriff Office administrators, detectives and jail personnel: MCSO Deputy
4 Reed Fisher, Charles Murrie, Jonathan Ward, Edward Durham, Edward Gerrard,
5 Alfredo Jiminez, L. Bryant, P. Ramos, Deputy Bregante, Sgt. Teeter, Deputy R. Cantu,
6 Chief Deputy Burt Liebersbach, and Monterey County Sheriff Mike Kanalakis .
- 7 b. Plaintiff wishes to depose the following civilian percipient witnesses: Michael
8 Pitruzzello, Christopher Griffith, Abel Hernandez, Roger Spencer, and Jesus Solano.
- 9 c. Plaintiff wishes to depose the following medical personnel: Crystal Coniglio, R.N.,
10 Craig A. Walls, M.D., B. Misa Hosohama, M.D., and Ray Miller, M.D.
- 11 d. Defendant County will propound discovery to all plaintiffs.
- 12 e. Defendant Natividad Medical Center wishes to depose all plaintiffs.
- 13 f. Defendant Natividad Medical Center wishes to depose the care providers at
14 Community Hospital of Monterey Peninsula including Ray Miller, M.D., Hans
15 Poggemeyer, M.D., Dragan Dimitrov, M.D., and Georgia M. Heal, M.D.
- 16 g. Defendant Natividad Medical Center wishes to depose plaintiff Jimmy Haws' care
17 providers at the skilled nursing facility or other care facility where he currently
18 resides, identifies presently unknown.
- 19 h. Defendant Natividad Medical Center reserves the right to request the depositions of
20 other individuals identified in discovery.

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22 **TRIAL SCHEDULE**

- 23 12. The parties request a trial date as follows:
- 24 13. The parties expect that the trial will last for the following number of days: 10 days.
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- 26
- 27

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Case 5:07-cv-02599-JF

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MARTINI & TABARI LAW Fax: 408-295-9300
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Attorney for Defendants
County of Monterey and Michael Kanakakis

David Sherman

David Sherman, Esq.
Attorney for Defendant
Natividad Medical Center

CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order. In addition the Court orders:

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Dated:

JEREMY FOGEL
UNITED STATES DISTRICT JUDGE

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JEREMY FOGEL, U.S. COURT OF MONTEREY, ET AL.
CIVIL CASE MANAGEMENT STATEMENT
AND PROPOSED ORDER

Case No. C 07-02599-JF

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TOTAL. P.02

1 Dated: _____

Michael Moore, Esq.
Attorney for Plaintiffs

3

4 Dated: _____

5 Ralph W. Boroff, Esq.
6 Attorney for Plaintiffs

7

8 Dated: _____

9 Traci A. Kirkbride,
10 Deputy Counsel
11 Attorney for Defendants
12 County of Monterey and Michael Kanalakis

13

14 Dated: _____

15 David Sheuerman, Esq.
16 Attorney for Defendant
17 Natividad Medical Center

18

CASE MANAGEMENT ORDER

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23 Dated: _____

24 JEREMY FOGEI
25 UNITED STATES DISTRICT JUDGE

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